

IPW AF/3764/\$

TRANSMITTAL OF APPEAL BRIEF (Small Entity)

Docket No.
JHM962



In Re Application of: **Lee A. Roadman**

Serial No. 10/033788	Filing Date 1/3/02	Examiner Richman	Group Art Unit 3764
--------------------------------	------------------------------	----------------------------	-------------------------------

Invention: **Interactive Treadmill**

TO THE ASSISTANT COMMISSIONER FOR PATENTS

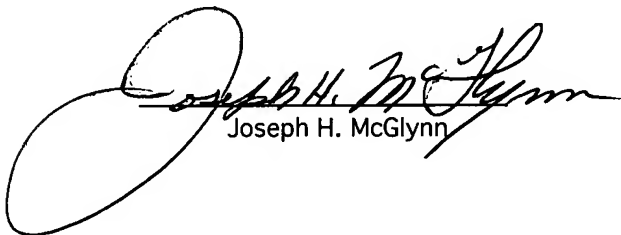
Transmitted herewith in triplicate is the Appeal Brief in this application.

The Notice of Appeal was filed **7/15/04**

Applicant is a small entity under 37 CFR 1.9 and 1.27.

A verified statement of Small Entity Status has already been filed in this application.

The fee for filing this Appeal Brief is: **\$165.00** and a credit card charge in that amount is enclosed.


Joseph H. McGlynn

9/9/04
Dated

Serial No. 10/033,788



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Applicant(s): Lee A. Roadman

Appeal No.: **Unknown**

Serial No.: 10/033,788

Group: 3764

Examiner: Glenn Richman

Filed: January 3, 2002

Title: Interactive Treadmill

Docket No.: JHM 962

TABLE OF CONTENTS

REAL PARTY IN INTEREST.....	3
RELATED APPEALS OR INTERFERENCES.....	3
STATUS OF THE CLAIMS.....	4
STATUS OF THE AMENDMENTS.....	4
SUMMARY OF THE INVENTION.....	4-7
ISSUES ON APPEAL.....	7
GROUPING OF CLAIMS.....	7
ARGUMENTS.....	8-9
CONCLUSION.....	9
APPENDIX.....	11-19

Serial No. 10/033,788

APPELLANT'S BRIEF

Serial No. 10/033,788

APPELLANT'S BRIEF

Commissioner for Patents
P. O. Box 1450
Alexandria VA 22313-1450

Sir:

Enclosed is an appeal from the final rejection date April 15, 2004 , finally rejecting claims 4-8, 10-12 and 14-22 . No claims have been canceled.

REAL PARTY IN INTEREST

The party identified in the caption of the brief is the real party in interest.

RELATED APPEALS OR INTERFERENCES

There are no appeals or interferences known to appellant, or the appellant's legal representative (there is no assignee) which will directly affect or be directly affected by or have a bearing on the Board's decision in this pending appeal.

Serial No. 10/033,788

STATUS OF THE CLAIMS

Claims 4-8, 10-12 and 14-22 remain in the application and are rejected. No claims are allowed.

STATUS OF THE AMENDMENTS

No amendments have been presented after Final.

SUMMARY OF THE INVENTION

The invention relates to two combinations of an accessory for an exercising device and an exercising device (referred to as the "combination") and, by itself, a device for use with exercising equipment. Each of the combinations have an accessory having a computer device with a keyboard 3 for inputting instructions to a computer, the computer being connected to the Internet, means for mounting the accessory to a platform 1 or 1', the platform having a bottom, brackets attached to the exercising device at the bottom of the platform by bracket holders 29 with means 31, 33 and 35 for adjusting the brackets relative to the exercising device in two different directions (page 4, lines 5- 9 and FIG 1 and page 5, lines 7-10 and page 6, lines 4- 14 and FIG. 3 (claims 20 and 22). In addition, the device when claimed for

use with exercise equipment may comprise a support 1 mounted on exercising equipment (e.g. , a treadmill) , a personal computer , a keyboard 3 to input instructions to the personal computer with the computer being connected to the Internet to allow a user to simultaneously operate the personal computer and access the Internet while exercising (page 4, lines 5- 7 and page 5, lines 7 -12, FIG. 1 (see claim 21)). For the combination there may be four spaced brackets 29 fixed to the platform 21" used (page 7, lines 1-4 and FIG. 4, claim 4). Each of the four brackets may have a horizontally disposed section 33 and a vertical section 35, page 7, lines 1-5 and FIGs. 3 and 4 (claim 5)). Each of the vertically disposed sections 35 may have a sleeve 37 page 6, line 11 and FIG.3) with a clamp 39 (page 6, line 16 and FIG.3) mounted to a frame member 41 (Claim 6). There may be four bracket holders each with a horizontally disposed section 33 with means 31 on the bracket holder for engaging the horizontally disposed section (page 6 line 10 and FIG. 3 and 4 (claim 7). The means 31 for engaging the horizontal section of the bracket may be a screw threaded (page 6, line 9 and FIG. 3 (claim 8).

The combination may be supported to the exercise equipment by supporting rods 35 and thumbscrews 31 used to adjust the position of the rods with respect to the brackets (page 6, lines 11- 14 and FIG.3 (claim 10).

Serial No. 10/033,788

If desired, the support of the combination may manufactured with the exercising equipment (page 5, lines 18-19 and FIG.2, (claim 11).

The exercising device of the claim 20 combination could be a treadmill (page 4, lines 7-8 and FIG. 1 (claim 12).

The platform of the claim 22 combination may have a bottom with bracket holders being attached to the bottom of the platform , page 6, line 8, FIG. 3 (claim 14). There may be four bracket holders fixed to the platform , page 6, line 7, FIGs. 3 and 4 (claim 15). Each of the brackets may have a horizontally disposed section 33 and vertically disposed section 35 with the bracket holders 29 being mounted on the horizontally disposed section and the bracket holders being fixed to the bottom of the platform page 6, lines 8-12, FIG. 3 (claim 16). For the claim 16 combination, there may be a movable sleeve 37 on the vertically disposed section 35 and a clamp 39 pivotally connected to the sleeve and the exercising device may have a frame member 41 on which the clamp is mounted. This same sleeve 37 and the clamp may be the means 31 for adjusting the brackets in two different directions, page 6. lines 7- 20 and FIG. 3 (claim 17). There may be four bracket holders in the claimed 16 combination that are spaced from each other each holder having a horizontally disposed section 33 and means 31,37 on the each bracket holder for engaging the horizontally disposed

Serial No. 10/033,788

section of the bracket, page 6, lines 10-12, FIG.3 (claim 18). The means on each bracket holder for engaging the horizontal section 33 of claim 18 may be a screw 31 threaded, page page 6, line 13 and FIG. 3 (claim 19).

ISSUES ON APPEAL

The issues in this appeal are:

Whether claims 4-8, 10-12 and 14-22 are rejectable under 35 USC 102(b) as clearly anticipated by the Netpulse (CRUNCH logs on the Netpulse) reference.

GROUPING OF CLAIMS

Claims are directed to two combinations and a device for use with exercise equipment. In one combination, claims 22, 14-19, a accessory has a game device and an exercising device, in the other combination, claims 20, 4-8 and 12, the accessory does not have a game device. The claims to the two combinations stand or fall with each combination. Separately, claims 21, 10 and 11 which do not require an exercising device and stand as or fall as a group.

ARGUMENTS

The only reference applied in the final rejection of February 6, 2004 is the Netpulse publication entitled CRUNCH Logs On with Netpulse dated September 1, 1998 (hereinafter referred to as the Netpulse publication). This reference is asserted by the Examiner to clearly anticipate the subject matter being claimed in the two combinations and the device for use with exercise equipment , claims 21,10 and 11 .

In order for a claim to be rejectable under the provisions of 35 USC 102(b) all of the elements of the claim must be shown or disclosed in the reference. This simply is not the case in the present rejection. For example, the Netpulse publication fails to disclose any specific exercise equipment that can be used. On page 2, second paragraph, line 7, the term " cardiovascular exercise equipment" is used. Clearly, this could encompass a variety of devices. Whether treadmills are within those is not disclosed. See claim 12.

Also not disclosed is any type of keyboard, platform, bracket, etc. all of which are specifically claimed in claims 20and 22. Further, how the information is conveyed to the user is not disclosed in the Netpulse publication. Is a personal computer used?

Serial No. 10/033,788

Does the device have a keyboard to impart instructions? These elements are clearly required in claim 21.

What structure mounts the equipment used to surf the Web in the Netpulse publication to the exercise equipment? How is the mounting equipment used and what is its structure? Again, there is no disclosure to support the rejection in question.

CONCLUSION

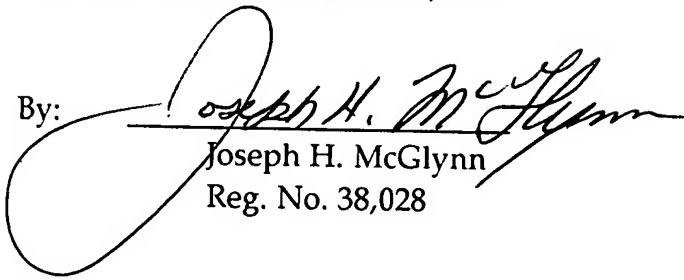
Appellant respectfully submits that the reference relied upon by the examiner fails to disclose the configuration of the claimed invention, and that the rejections relying upon the art of record are improperly founded both in fact and in law. Therefore, the examiner's rejections should be reversed and a decision rendered favorable to the appellant.

Accordingly, the Honorable Board of Patent Appeals and Interferences is respectfully requested to reverse the examiner's rejections of claims 4-8, 10-12 and 14-22 are rejectable under 35 USC 102(b) --to render a decision favorable to appellant.

Serial No. 10/033,788

Respectfully submitted,
Patent & Trademark Services, Inc.™

By:


Joseph H. McGlynn
Reg. No. 38,028

Serial No. 10/033,788

APPENDIX

Serial No. 10/033,788

Claim 4. The combination as claimed in claim 20 , wherein there are four spaced bracket holders fixed to said platform.

Claim 5. The combination as claimed in claim 4, wherein each of said brackets have a horizontally disposed section and a vertically disposed section,

said bracket holders being mounted to said horizontally disposed section of said bracket, and

each of said bracket holders being fixed to said bottom of said platform.

Claim 6. The combination as claimed in claim 5, wherein said vertically disposed section of each bracket has a sleeve movable along said vertically disposed section, and

a clamp mounted by a pivotal connection to said movable sleeve, said exercising device having a frame member on which said clamp is mounted, and

said means for adjusting said brackets relative to said exercising device in two different directions is said sleeve and said clamp.

Serial No. 10/033,788

Claim 7. The combination as claimed in claim 6, wherein there are four bracket holders,

each of said bracket holders being spaced from other bracket holders,
each bracket holder receiving a horizontally disposed section of said bracket,
and

means on each bracket holder for engaging said horizontally disposed section of the bracket.

Claim 8. The combination as claimed in claim 7, wherein said means on each bracket holder for engaging said horizontally disposed section of the bracket is screw threaded.

Claim 10. The device as claimed in claim 21 , wherein said support is attached to said exercise equipment by means of supporting rods and brackets, and

wherein thumbscrews are used with said supporting rods and brackets to adjust the position of said rods with respect to said brackets.

Serial No. 10/033,788

Claim 11. The device as claimed in claim 21 , wherein said support is manufactured with said exercise equipment.

Claim 12. The combination as claimed in claim 20 , wherein said exercising device is a treadmill.

Claim 14. The combination as claimed in claim 22 , wherein said platform has a bottom,

said brackets being attached to said bottom of said platform by bracket holders.

Claim 15. The combination as claimed in claim 14, wherein there are four spaced bracket holders fixed to said platform.

Serial No. 10/033,788

Claim 16. The combination as claimed in claim 14, wherein each of said brackets have a horizontally disposed section and a vertically disposed section,

said bracket holders being mounted to said horizontally disposed section of said bracket, and

each of said bracket holders being fixed to said bottom of said platform.

Claim 17. The combination as claimed in claim 16, wherein said vertically disposed section of each bracket has a sleeve movable along said vertically disposed section, and

a clamp mounted by a pivotal connection to said movable sleeve,

said exercising device having a frame member on which said clamp is mounted, and

said means for adjusting said brackets relative to said exercising device in two different directions is said sleeve and said clamp.

Serial No. 10/033,788

Claim 18. The combination as claimed in claim 16, wherein there are four bracket holders,

each of said bracket holders being spaced from other bracket holders,

each bracket holder receiving a horizontally disposed section of said bracket,

and

means on each bracket holder for engaging said horizontally disposed section of the bracket.

Claim 19. The combination as claimed in claim 18, wherein said means on each bracket holder for engaging said horizontally disposed section of the bracket is screw threaded.

Claim 20. The combination of an accessory for an exercising device and an exercising device comprising:

an exercising device,

an accessory,

means for mounting the accessory to said exercising device,

said accessory having a computer device with a keyboard for inputting instructions to the computer device,

said computer device being connected to the Internet,

said means for mounting the accessory having a platform,

said platform having a bottom,

brackets attached to said exercising device,

said brackets being attached to said bottom of said platform by bracket holders,

said brackets also being attached to said platform, and

means for adjusting said brackets relative to the exercising device in two different directions.

Serial No. 10/033,788

Claim 21. A device for use with exercise equipment comprising:

- a support mounted on exercising equipment,
- a personal computer,
- a keyboard on said support to input instructions to said personal computer,
- said personal computer being connected to the Internet,
- whereby a user can simultaneously operate the personal computer and access the Internet while exercising.

Claim 22. The combination of an accessory for an exercising device and an exercising device comprising:

an exercising device,

an accessory having means for mounting a game device on said exercising device,

said game device having a computer device,

said means for mounting the game device comprising a platform,

brackets attached to said exercising device,

said brackets also being attached to said platform,

a computer keyboard connected to the computer device and connected to the Internet,

said computer keyboard being used for inputting instructions to the computer to operate said game device , and

means for adjusting said brackets relative to the exercising device in two different directions.

<input checked="" type="checkbox"/> Netpulse - The Internet Powered Workout	<input checked="" type="checkbox"/> Netpulse product	<input checked="" type="checkbox"/> Netpulse - active lifestyle workout equipment with highspeed Internet access
Members Fitness Centers Advertisers Corporate		
<input checked="" type="checkbox"/> Press Title	<input checked="" type="checkbox"/> Multim	<input checked="" type="checkbox"/> Ar <input checked="" type="checkbox"/> Rel <input checked="" type="checkbox"/> Downl

CRUNCH Logs On with Netpulse

CRUNCH Brings Netpulse Stations™ To Their New York, Miami, Los Angeles & San Francisco Facilities

New York, NY -- September 01, 1998 - CRUNCH, the innovative fitness company known for original exercise programming like Firefighter and Hypoxic Altitude Training, announces the arrival of Netpulse Stations™ to all of its New York, Los Angeles, Miami and San Francisco clubs.

Netpulse offers CRUNCH members the opportunity to make workouts more enjoyable. They can surf the Web, read an on-line newspaper or magazine, check sports scores, receive stock quotes, and place stock trades, watch TV, access FREE Web-based Email, listen to CD's or shop - all while they work out.

Plus, Netpulse features Fitness Incentive Programs™ which reward CRUNCH members with more than just a toned body. Each minute spent training on Netpulse equipment earns exercisers American or United Airlines frequent flyer miles, free Compact Disks from Tower Records and Blockbuster Music, massages, and personal training sessions, gift certificates to retailers, fantasy vacations and much more. Netpulse and CRUNCH are also developing several exclusive CRUNCH-based programs, including the CRUNCH-Netpulse Challenge. In this competition, CRUNCH members from across the country will be able to compete against each other on an 8-week fitness competition.

"We are redefining exercise as a fun, motivating, and productive experience," explains Netpulse CEO and Intuit co-founder Tom Proulx. "The number one reason that people quit their exercise programs is plain and simple boredom. Netpulse Stations solve this problem and fit perfectly with CRUNCH, a gym known world-wide for tackling head-on the brain-numbing boredom of exercise with fun and creative fitness programs and aerobics."

Doug Levine, Chairman and CEO of CRUNCH states, "The future of fitness is in its technology. Netpulse's Internet-connected fitness system allows the exerciser to create a unique and entertaining experience each time they enter the gym. At CRUNCH, our mission is to keep people healthy, in-shape and exercising in a variety of fun and exciting ways. Netpulse is a great way to do just that."

Part of the new CRUNCH-Netpulse relationship includes the development of joint marketing and promotions. For example, at all CRUNCH locations, Netpulse Stations will feature a CRUNCH logo right on the Netpulse screen with a touch connection to the CRUNCH Web-site or to a CRUNCH video message. CRUNCH members can simply touch the CRUNCH logo to receive instant access to information on upcoming Fitness Incentive Programs, new CRUNCH products and services; the latest news developments in health, nutrition and fitness; updated CRUNCH aerobic schedules; and even a service that will help them locate a CRUNCH workout partner.

CRUNCH is recognized throughout the United States as "a health club that dares to be different" (Dobbs, CNN) with original aerobic programming, award-winning architecture and design, innovative individual fitness programs and state-of-the-art equipment.

Founded in 1989, CRUNCH is a leading developer of athletic clubs and lifestyle products for an

active audience. CRUNCH currently owns and operates fitness centers in New York, Los Angeles, Tokyo, San Francisco and Miami and has plans to extend to other major U.S. markets in 1998. In addition to athletic clubs, the CRUNCH brand extends to: exercise music (CRUNCH: Heavy Breathing and Blade Jam, both produced by RCA Records); books (CRUNCH: A Complete Guide to Health and Fitness, published by Doubleday); active body wear for men and women; exercise videos (fourteen best-sellers released since 1995); CRUNCH Fitness Television (the number one exercise program on ESPN 2) and CRUNCH CARE, the first line of hair and body care products designed for people who sweat. This spring, CRUNCH and Warner Bros. Studio Store launched Workout With Bite - an athletic apparel and exercise accessory line merging the CRUNCH logo with Warner Bros. Looney Tunes Characters.

Netpulse Communications, Inc. is a privately held company with headquarters in San Francisco, California. Since its inception, Netpulse has been applying the latest technologies to make fitness equipment more enjoyable for exercisers and more productive for fitness center owners, trainers and staff. In addition, Netpulse offers advertisers a new, interactive marketing opportunity designed to reach an affluent, well educated, highly targeted and captive audience of health club members while they are exercising. It is the only company to connect the Internet to cardiovascular exercise equipment. The Netpulse senior management team boasts experience in the Internet, high-tech, entertainment and advertising industries and is led by Thomas Proulx, previously best known as the co-founder of Intuit and author of its best-selling Quicken® software. For more information on Netpulse, please visit the Netpulse Web-site at <http://web.archive.org/web/20001207151800/http://www.netpulse.net/>.

©2000 NETPULSE COMMUNICATIONS, INC | TERMS OF USE AND PRIVACY STATEMENT

[BACK TO TOP](#) | [HOME](#) | [MEMBERS](#) | [FITNESS CENTERS](#) | [ADVERTISERS](#) | [CORPORATE](#)